

BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: June 21, 2006

Division : Budget & Finance

Bulk Item: Yes X No

Department: OMB

AGENDA ITEM WORDING:

Approval to renew the existing Hosted Application Service Agreement with Sarasota County for one additional year.

ITEM BACKGROUND: Our existing agreement allows the County an option to renew the license agreement for (2) renewal periods of (1) year each.

PREVIOUS RELEVANT BOCC ACTION: On March 19, 2003, the BOCC approved a three (3) year license agreement to use the Governmental Enterprise Management System or GovMax.

CONTRACT/AGREEMENT CHANGES: Renew contract for one additional year.

STAFF RECOMMENDATIONS: Approval

TOTAL COST: \$21,695.41

BUDGETED: Yes X No

COST TO COUNTY: \$21,695.41

REVENUE PRODUCING: Yes No **AMOUNT PER MONTH** **Year**

APPROVED BY: County Atty mf OMB/Purchasing JB Risk Management MS

DIVISION DIRECTOR APPROVAL:


(Salvatore R. Zappulla)

DOCUMENTATION: Included X To Follow Not Required

DISPOSITION:

AGENDA ITEM #

MONROE COUNTY BOARD OF COUNTY COMMISSIONERS

CONTRACT SUMMARY

Contract with: Sarasota County BOCC Contract #_____

Effective Date: June 1, 2006

Expiration Date: May 31, 2007

Contract Purpose/Description:

Renewal of Hosted Application Service Agreement (GovMax)

Contract Manager:	<u>Tina Boan</u>	<u>4472</u>	<u>OMB Stop # 1</u>
	(Name)	(Ext.)	(Department/Stop #)

for BOCC meeting on 6/21/06 Agenda Deadline: 6/6/06

CONTRACT COSTS

Total Dollar Value of Contract: \$ 21,695.41 Current Year Portion: \$

Budgeted? Yes ☒ No ☐ Account Codes: 001-00104-530340- -

Grant: \$	-----
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County Match: \$

[illegible]

ADDITIONAL COSTS

Estimated Ongoing Costs: \$_____/yr For: _____

(Not included in dollar value above) (eg. maintenance, utilities, janitorial, salaries, etc.)

CONTRACT REVIEW

	Date In	Changes Needed	Reviewer	Date Out
Division Director	_____	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	<i>[Signature]</i>	5/25/06
Risk Management	5/30/06	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	M. Slawick	5/31/06
O.M.B./Purchasing	_____	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	T. B.	5/24/06
County Attorney	5/30/06	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	J. Murphy	5/30/06

Comments: _____

**SARASOTA COUNTY
HOSTED APPLICATION SERVICE AGREEMENT
First Renewal**

This renewal ("Renewal") is made and entered into this ____ day of June 2006, between the Monroe County Board of County Commissioners, referred to as "LICENSEE" and Sarasota County, referred to as "LICENSOR".

WITNESSETH:

WHEREAS, the parties entered into a three (3) year agreement (reference Sarasota County contract #2003-282, "License Agreement") commencing June 1, 2003 with a three (3) year term and the option to renew the License Agreement for up to two (2) renewal periods of one (1) year terms; and

WHEREAS, the LICENSEE desires to exercise the option to extend the License Agreement from June 1, 2006 until May 31, 2007 and deems said arrangement to be in the best interest of Monroe County.

NOW, THEREFORE, IN CONSIDERATION of the mutual promises contained herein, the parties hereby agree to renew and extend the License Agreement as follows:

1. The agreement shall be extended for a one-year period commencing June 1, 2006 and ending May 31, 2007.
2. In all other respects, the License Agreement, shall remain in full force and effect.

(SIGNATURES ON FOLLOWING PAGE)

IN WITNESS WHEREOF, the parties have executed the Renewal as of the date first above written.

LICENSEE:

Monroe County Board of County
Commissioners
Monroe County, Florida

By: _____

Mayor Charles "Sonny" McCoy

Date: _____

ATTEST: _____
Danny L. Kolhage
Clerk of the Circuit Court and
Ex-Officio Clerk of the Board of
County Commissioners

LICENSOR:

Sarasota County Board of County
Commissioners
Sarasota County, Florida

By: _____

Chair

Date: 6/7/2006

ATTEST:
KAREN E. RUSHING, Clerk
of the Circuit Court and
Ex-Officio Clerk of the
Board of COUNTY Commissioners

BY: _____

DEPUTY CLERK

Approved as to form and correctness:

BY: _____

COUNTY ATTORNEY

TRW

CONTRACT NO. 2003-282

BCC APPROVED 6/24/03

**SARASOTA COUNTY
HOSTED APPLICATION SERVICE AGREEMENT**

THIS HOSTED APPLICATION SERVICE AGREEMENT, made and entered into this 19th day of March 2003 by and between MONROE COUNTY, a political subdivision of the State of Florida, hereafter referred to as "**LICENSEE**", and SARASOTA COUNTY, a political subdivision of the State of Florida, hereinafter referred to as "**LICENSOR**".

WITNESSETH: The Licensor hereby grants to Licensee a non-exclusive and non-transferable hosted application service agreement, hereinafter referred to as "License Agreement" to use the Governmental Enterprise Management System, hereinafter referred to as "GEMS". The GEMS system encompasses an integrated Capital Projects and Operating Budget system. This License Agreement covers the use of both of these systems used together or separately. Appendix I lists the acronyms and Appendix II lists definitions of terms used in this License Agreement.

TERMS AND CONDITIONS

A. Services Provided:

1. The service covered by this License Agreement is GEMS ("the Service"). Licensor agrees to provide access to its Operating and/or Capital Budget Systems and shall be deemed to have occurred when connection is made by electronic connection via the Internet on or before thirty (30) days following the commencement date of this License Agreement. Licensor will provide the following services.
 - a. Provide Hardware platform, operating system, system application and database;
 - b. Perform maintenance and operations control on the above mentioned system;
 - c. Store data and conduct daily backups of database;
 - d. Provide security of system and data;
 - e. Provide training on the use of the system limited to the functions of the GEMS system and assumes knowledge of basic computing. Eight hours of on-site training will be available. Additional hours of training would be available in Sarasota County;
 - f. Provide help desk support to the Budget Manager and up to two (2) system administrators;
 - g. Provide consulting services of up to 40 hours on database population and database field requirements. Specific field requirements will be provided by licensor under separate cover;

within the test and production systems located within the Data Center.

- e. Standard System Recovery Services - Licensor provides a variety of data and system recovery services. Some of these are provided as part of Sarasota County's Hosting Services, as described below. Others, such as Hot Stand-by and Cold Stand-by facilities, can be optionally provided as desired by Licensee.

- (i) The use of disk mirroring and off-site storage of backup tapes enable the restoration of service in the event the application database is corrupted and or damaged. The high-availability architecture enables business continuance, albeit at degraded performance, in the event that the primary computing resources are made inoperable.
- (ii) Licensor implements and maintains managed disk with a mirrored capability. This configuration is provided as a first level of data recovery.
- (iii) Licensee data will be backed-up daily. Licensor stores copies of all backup tapes in an off-site, environmentally controlled, secure archive. Off-site storage is cycled on a daily basis. This service is provided as a means to protect Licensee from total loss of data in the event of a significant site failure.
- (iv) All systems purchased by Licensor are equipped with dual power supplies and are provided with commercial power supported by separate uninterrupted power supplies. The Uninterrupted Power Supply (UPS) facilities are composed of battery back-up and diesel generators. The battery back-up services are sufficient to support power transition from primary power to the secondary power provided by the diesel generators.

3. Grant of License and Permitted Uses. GEMS shall at all times remain the property of Licensor. Licensor grants, and Licensee accepts, a non-exclusive, non-transferable software license ("the License") to use GEMS in accordance with the provisions of this Service Agreement. GEMS may only be used by Licensee's own personnel for the development of Licensee's operating and/or capital budget(s) and management use. Licensee agrees to take reasonable precautions to provide adequate security to use and provide access to GEMS only as permitted by this License Agreement.

4. Prohibited Uses. Licensee recognizes that GEMS was developed by Licensor, that Licensor claims copyright protections in GEMS to the fullest extent provided by law and Licensee agrees that it will not infringe upon or otherwise violate Licensor's copyright. Licensee shall not sell, assign, license, sublicense, transfer, allow the use of, or otherwise convey any of its rights to the GEMS System provided under this License Agreement to any third party, any other governmental, or non-governmental entity without Licensor's prior written consent, which consent Licensor shall have the right to either grant or deny in its sole discretion.
5. Software and Licensing Requirements. In order to operate GEMS, additional software licenses may be required. It is the responsibility of Licensee to acquire all necessary licenses and to maintain sufficient numbers of licenses to operate GEMS and to satisfy all license agreement requirements by others. The following represent the minimum requirements of Licensee:
 - a. Desktop computers or terminals with sufficient power to move large amounts of data over the internet;
 - b. Internet access DSL or higher bandwidth;
 - c. Software licenses for report writers (Crystal Reports) and web browsers (Internet Explorer 6.0);
 - d. Security at the desktop or terminal location;
 - e. All table data in Licensor's required format and media
6. Data Ownership. Licensor recognizes that Licensee is the sole owner of its data and as such will be provided with access to all databases as requested. Licensor recognizes that such data may contain material exempt from State of Florida Public Records Disclosure Act and will turn over to Licensee for response any request from a third party for access to or copy (ies) of said data.

- B. Term: The term of this License Agreement shall commence on June 1 2003, ("Commencement Date") and shall continue for **three (3) years** thereafter, or such earlier date on which the term is cancelled pursuant to the provisions of this License Agreement. Provided the Licensee is not in default under the terms of this License Agreement, the Licensee may elect to renew the License Agreement for up to two (2) renewal periods of one (1) year each. The option to renew the License Agreement shall be exercised in writing not later than ninety (90) days prior to the end of the initial licensing period or the first renewal period and signed by Licensee or its authorized agent. The terms and conditions during such renewal period shall be the same, except the fee shall be adjusted as provided in Section C of this License Agreement.
- C. Payment of Fees:

1. Annual Fee For Use of License. Licensee agrees to pay to the Licensor or Licensor's Administrative Agent, or assigns, at the address identified in this License Agreement, or other place as the Licensor may from time to time designate by notice in writing, a **fee of \$20,000 per annum for both the Operating and Capital modules**, or a fee of \$15,000 per annum for just one of these modules.
2. Fee Adjustment: The fee shall be increased annually on the anniversary date of the Commencement Date of the initial term hereof in direct proportion to the percentage increase in the cost of living as determined by the Consumer Price Index, U.S. City Average, all items (1967 = 100), published by the U.S. Bureau of Labor Statistics of the U.S. Department of Labor, or any revision equivalent thereto published by the Bureau; or three percent (3%) of the preceding year's base fee cost, whichever is less. If there ceases to be any such publication as the Consumer Price Index referenced above, some other substantially equivalent price index generally recognized as authoritative, may be substituted, provided that such index substitute is found to be mutually agreeable to the Licensor and the Licensee; provided that any such alternative index shall be appropriately reconciled to the 1967 base 100. The increased fee shall be determined by multiplying the preceding year's base fee cost by a fraction, the numerator of which shall be the index for the latest month published immediately prior to the beginning of the new term and the denominator of which shall be the index number for the same month one year earlier; or by multiplying the preceding year's base fee by three percent (3%), whichever is less. In no event shall the annual fee for any year decrease below the annual fee for the preceding year. Monroe County's performance and obligation under this agreement is contingent upon an annual appropriation by the Board of County Commissioners.
3. The Licensee is a local government agency, therefore, the Licensee shall not be deemed in default for failure to pay the License fee, if the fee is paid in accordance with the terms of the Florida Statutes Chapter 218. The Florida Prompt Payment Act shall control as to the time by which such fee must be received by the Licensor.

D. Termination of License Agreement:

1. If the Licensee is in material breach or default, including non-payment of any fees or invoices, which if curable, is not cured within thirty (30) days after receipt of the written notice of breach or default, then Licensor's Administrative Agent may terminate this License Agreement upon thirty (30) days prior written notice.
2. Immediately following termination of this License Agreement, Licensee shall either destroy or return all manuals, templates and product software provided by Licensor and certify in writing to the Licensor's Administrative Agent that the Licensee has destroyed any such materials, which have not been returned.

3. In the event Licensor terminates the delivery of services through the service bureau, or elects not to exercise the option to renew the License Agreement, Licensee may elect to purchase a copy of the system code described in the License Agreement, for the sole use of the Licensee, for a purchase price in the amount of \$150,000, payable within thirty (30) days from the date the purchase option is exercised.
 4. If the Licensor is in material breach or default, including failure to perform as provided in section A "Services Provided" which is not cured within thirty (30) days after receipt of the written notice of breach or default, then Licensee may terminate this License Agreement upon thirty (30) days prior written notice.
- E. Limited Warranty. Licensor certifies that it has a proprietary right and authority to license GEMS and that GEMS is the copyrighted product of Licensor. Licensor shall be responsible for any claim that GEMS infringes a U.S. patent or copyright or a third party's trade secrets; provided that:
1. Licensee promptly notifies Licensor in writing of the claim;
 2. Licensor has sole control of the settlement or defense of any action against Licensee as to which this indemnity relates; and
 3. Licensee reasonably cooperates with Licensor to facilitate such defense. Other than, the certification and Limited Warranty expressly stated in this Section (E), there are no express or implied warranties relating to GEMS covered by this License Agreement, including but not limited to warranties of merchantability or fitness for a particular purpose.
- F. Limitation of Liabilities: Licensor shall have no liability for any loss or liabilities resulting from any application of GEMS, or results, of such application by Licensee or any other party. Licensor's sole obligation and liability, if GEMS is defective or fails to conform to specifications, shall be to correct software-coding errors in the original code. In any event, Licensor's liability for any losses or damages which arise out of or in connection with GEMS services provided under this License Agreement, whether the claim is in contract or otherwise, shall not exceed the annual amount paid by Licensee for the particular licensed GEMS System as to which the claim arose. Under no circumstances shall Licensor be liable for special, incidental or consequential damages, including, but not limited to, loss of anticipated income or loss resulting from business disruption, even if Licensor has been advised of the possibility of such damages.
- G. Applicable Law and Venue:
1. This License Agreement shall be deemed to be a Florida agreement and shall be governed as to all matters of validity, interpretation, obligations, performance or otherwise, exclusively by the Laws of the State of Florida, and all questions arising with respect thereto shall be determined in

accordance with such laws. Regardless of where actually delivered and accepted, this License Agreement shall be deemed to have been delivered and accepted by the parties in the State of Florida.

2. Any and all suits or any claims or for any and every breach or dispute arising out of this License Agreement shall be maintained in the appropriate court of competent jurisdiction in Sarasota County, Florida.

H. Licensors Administrative Agent: The Licensors Administrative Agent is designated to act on behalf of the Licensor and to administer the terms and conditions of this License Agreement. If necessary, a specific Administrator may be authorized to perform the duties and responsibilities of the Administrative Agent. The Licensor's Administrative Agent is Thomas J. Williams, Manager, Fiscal Planning.

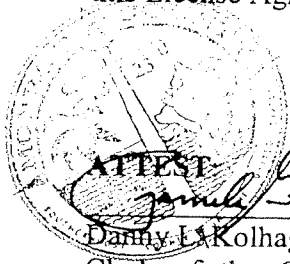
- I. Notices: Except as otherwise provided herein, all notices required or permitted under this License Agreement shall be made in writing and shall be deemed given and served when deposited in the United States Mail, postage prepaid and certified, directed as follows:

If to Licensor:	Sarasota County Government 1600 Ringling Boulevard Sarasota, Florida 34236 Attn: Thomas J. Williams, Manager, Fiscal Planning
With copies to:	Sarasota County Government 1600 Ringling Boulevard Sarasota, Florida 34236 Attn: Stephen D. DeMarsh Esq. Deputy County Attorney Robert G. Cobb, Contracts
If to Licensee:	Monroe County Government 1100 Simonton Street Key West, Florida 33040 Attn: Jennifer Hill, Budget Director
With Copies to:	Monroe County Government 1100 Simonton Street Key West, Florida 33040 Attn: Richard Collins, Esq. County Attorney
Either party may change its address by giving written notice of such change.	

- J. Miscellaneous:

1. This License Agreement constitutes the entire agreement between the parties with respect to GEMS and the matters discussed herein and no prior contracts, representation, condition, understanding, or agreement of any kind, oral or written, shall be binding upon the parties unless incorporated into this License Agreement in writing. This License Agreement may not be modified or amended except in writing by mutual agreement by both parties.
 2. If any provision of this License Agreement is deemed invalid or unenforceable, the remaining provisions shall not be affected thereby. The terms and conditions of this License Agreement shall prevail over any printed provision of any purchase order form used by Licensee to order the GEMS System.
 3. This License Agreement contains and embodies all the representations, covenants and promises made by the parties hereto, and no modifications or amendments hereof shall be valid unless in writing and executed by the parties hereto.
- K. This License Agreement will be effective when it has been signed by Licensee's Chair or Vice Chair and signed by the Licensor's Chair or Vice Chair. Licensee's signature below constitutes its acceptance for the License Agreement.

IN WITNESS WHEREOF, the LICENSOR and the LICENSEE have duly executed this License Agreement on the day and year first above written.



ATTEST
Danny L. Kolhage D.C.
Danny L. Kolhage
Clerk of the Circuit Court and Ex-
Officio Clerk of the Board of County
Commissioners.

MONROE COUNTY
BOARD OF COUNTY COMMISSIONERS
OF MONROE COUNTY, FLORIDA

By: *W. J. M. Spichard*
Its: *Mayor* Chair
"LICENSEE"

DANNY L. KOLHAGE
CLERK OF CIR. CT.
MONROE COUNTY, FLA.

2003 JUL -8 PM 12:45

FILED FOR RECORD

Approved as to form and correctness:

Samuel H. H. H. 7/07/03
County Attorney:

SARASOTA COUNTY
BOARD OF COUNTY COMMISSIONERS
OF SARASOTA COUNTY, FLORIDA

By:

Its:

Chair
"LICENSOR"

ATTEST:

Cynthia A. Strath
Clerk of the Circuit Court and Ex-
Officio Clerk of the Board of County
Commissioners.

Approved as to form and correctness:

[Signature]
County Attorney:

Appendix I

ACLS	Access Control List
ASP	Application Service Provider
BIA	Business Impact Analysis
CPU	Central Processing Unit
GEMS	Government Enterprise Management System
DB	Database
HA	Hi -Availability
LAN	Local Area Network
SecOS	Security Operating System
SLA	Service Level Agreement
WAN	Wide Area Network
UPS	Uninterrupted Power Supply
VPN	Virtual Private Network

Appendix II

Definitions

Catastrophic Loss shall mean a condition in which the GEMS Data Center, or a portion thereof and the processing environments being hosted, are unavailable for a period greater than 120 continuous hours. The cause of catastrophic loss shall be limited to acts of war, acts of God, earthquake, flood, fires, explosions, riots, sabotage or governmental acts or acts of government-regulated utilities.

CPU Utilization shall be continually measured and reported for average utilization during 15-minute intervals over a 24-hour period of time. Should average CPU Utilization exceed 75% over a 24-hour period of time a performance problem will be identified and appropriate problem management procedures evoked

Customer Data shall mean all materials, data, databases, documents, images, designs, drawings, music, sound recordings and other similarly stored material, permanently or temporarily on "LICENSEE" Equipment, and all information with respect to the use of such materials and by user's of "LICENSEE'S" services, such as nature and frequency of access, user's identity, IP address, domain name, user's financial information, users digital or electronic signature, user's telephone numbers, and any other similar information, identifiable or not, that pertains, relates to or results from any access to "LICENSEE'S" equipment by a third party through modem or telephone lines. Customer Data also includes any report, summary, and statistical or other analysis of any or all of the Customer Data.

Customer Registration Form shall mean the list that contains the names and contact information (e.g., pager, email and telephone numbers) of "LICENSEE" and individuals authorized by the same for the administration of the System.

Government Enterprise Management System or GEMS shall mean the Sarasota County Government Enterprise Management System Background Intellectual Property including the object code and all Foreground Intellectual Property related thereto.

Data Center(s) shall mean any of the facilities used by Sarasota County to provide the Service(s).

Designated System shall mean the computer hardware and operating system configuration designated on the relevant Order for which the Programs are licensed to "LICENSEE" under this Agreement or Software License Agreement.

Disk Utilization shall be continually measured and reported for average utilization during 15-minute intervals over a 24-hour period of time. Should average Disk

Utilization exceed 90% over a 24-hour period of time a performance problem will be identified and appropriate problem management procedures evoked.

Downtime shall mean that the Government Enterprise Management Application and or the application database are unavailable to "LICENSEE" from "LICENSEE'S" network connection.

Employee shall mean a person employed in a permanent full time status as defined by the U. S. Department of Labor, except that consultants, contractors, subcontractors, and contracted individuals are specifically excluded.

End User unless otherwise specified in the Order, shall mean a specific individual employed by "LICENSEE" who is authorized by "LICENSEE" to use the Sarasota County Programs on the Designated Systems, regardless of whether the individual is actively using the Programs at any given time.

Enhancement shall mean installing, delivering, supporting, and/or changing the Software Products software including, but not limited to, designing, developing, programming, implementing, documenting, and producing Software Products:

- To assure the software complies with changes in dynamic ordinances, laws and statutes.
- To keep the software compatible to "LICENSEE'S" platform.
- To keep the software compatible to "LICENSEE'S" changing business processes.
- To respond to requests for new functional or technical capability, look and feel, or to provide an upgrade specifically requested by "LICENSEE".

Executable Code shall mean the fully compiled version of a software program that can be executed by a computer and used by an End User of that program without further compilation.

Foreground Intellectual Property means all Intellectual Property that is conceived, or made, or reduced to a tangible medium of expression during any services provided or any activities conducted by Sarasota County pursuant to this Agreement.

Information Services shall mean consulting, work, tasks, jobs, analyses, and other services producing information or software, standards, correspondence, memoranda, working papers, system descriptions, documentation, specifications, user guides, products, or derivatives thereof.

Initial Term shall mean the minimum term for which Sarasota County will provide the Service(s) to "LICENSEE", as indicated herein. Except as otherwise expressly provided in this Agreement, Sarasota County is obligated to provide and "LICENSEE" is obligated to pay for each Service through its Initial Term and any Renewal Term.

Machine-readable shall mean in a machine executable language.

Maintenance shall mean the correction of any residual errors that may be discovered by Sarasota County or "LICENSEE" in any Sarasota County provided proprietary or non-proprietary software under a maintenance fee contract for Supported Program Licenses or Contracts at no additional charge. Suspected errors in the software discovered by "LICENSEE" will be handled according to Sarasota County's Software Service Support and Maintenance procedures in effect on the date Software Service Support and Maintenance is ordered or as directed in the Program License or Contract, subject to payment by "LICENSEE" of all applicable Software Service Support and Maintenance fees. Coverage under the maintenance fee contracts excludes: (i) malfunction or inoperability of Supported Programs software caused by changes or additions in "LICENSEE'S" platform or in the Supported Programs software by anyone other than Sarasota County, if the Supported Programs software would have functioned or operated correctly without the changes or additions or without the change in platform, (ii) errors found to be caused by "LICENSEE" supplied data, machine or operator failure, "LICENSEE" negligence, or enhancements, modifications, or changes by anyone other than Sarasota County, or (iii) any other cause not inherent in the software as delivered and provided by Sarasota County.

Sarasota County Software shall mean the software product(s) for which Sarasota County owns the copyright including any adaptations, translations, de-compilations, disassemblies, emulations, or derivative works thereof.

Sarasota County Supplied Equipment shall mean any computer hardware, software and other tangible equipment and intangible computer codes contained therein provided by Sarasota County for use by "LICENSEE".

Sarasota County Technology shall mean Sarasota County's proprietary technology, including Sarasota County's Services, software tools, hardware designs, algorithms, software (in source and object forms), user interface designs, architecture, class libraries, objects and documentation (both printed and electronic), know-how, trade secrets and any related intellectual property rights throughout the world (whether owned by Sarasota County or licensed to Sarasota County from a third party) and also including any derivatives, improvements, enhancements or extensions of Customer Technology created and conceived, reduce to practice, or developed during the term of this agreement by Sarasota County that are not uniquely applicable to "LICENSEE" or that have general applicability in the art.

Non-Sarasota County Software shall mean software to which a party other than Sarasota County owns the copyright.

Price List shall mean Sarasota County's standard commercial fee schedule that is in effect when Software Products or Service Support and Maintenance services are ordered by "LICENSEE".

Program or Programs shall mean: (i) the computer software code owned or distributed by Sarasota County for all Software Products and services outlined in this Agreement for which "LICENSEE" has been granted a license pursuant to a license agreement or contract between "LICENSEE" and Sarasota County ("Software License Agreement" or "Service Level Agreement"); and (ii) the user guides and manuals for use of the software ("Documentation"); and (iii) Updates of Software Products.

Program License or Contract shall mean a Program license or contract for which "LICENSEE" has ordered Software Products or Services for the relevant time period under this Agreement.

Proprietary Information shall mean information, whether in tangible, machine readable, or electronic form, disclosed by either of the parties to the other, which the disclosing party at the time of disclosure identifies electronically or in written or other tangible form of expression as confidential and/or proprietary by means of a legend, marking, stamp or other notice identifying the information to be confidential and/or proprietary, or information disclosed orally or visually by a party to this Agreement, where the disclosing party identifies such information as confidential and/or proprietary at the time of disclosure and, within thirty (30) days after such oral or visual disclosure, reduces the subject matter of the disclosure to a tangible or electronic form properly identified in the manner described above and submits it to the receiving party.

Registered User shall be any input device equipped with the required capabilities for running at least one instance of the Government Enterprise Management (GEMS) Application.

Renewal Term shall mean any service term following the Initial Term.

Residual Error For the purposes of this Agreement, residual errors include software malfunctions, and programming, coding, and syntax that cause the Software Products to fail to conform to the contract requirements, Statement of Work, or as advertised in Sarasota County written material and after having been successfully acceptance tested, but excludes additional functionality or features not included in the contract requirements, Statement of Work, nor advertised in Sarasota County written material, nor included in an amendment to this Agreement. Also, "Residual Errors" and "generally made available under maintenance contracts at no additional charge" exclude (i) malfunction or inoperability of Supported Programs software caused by changes or additions in "LICENSEE"'s platform or in the Supported Programs software by anyone other than Sarasota County, if the Supported Programs software would have functioned or operated correctly without the changes or additions or without the change in platform, (ii) errors found to be caused by "LICENSEE" supplied data, machine or operator failure, "LICENSEE" negligence, or enhancements, modifications, or changes by anyone other than Sarasota County, or (iii) any other cause not inherent in the software as delivered and provided by Sarasota County.

Service Commencement Date shall mean the agreed upon date Sarasota County will begin providing the Service(s) to "LICENSEE". As indicated herein service shall begin the next business day after execution of this Agreement by "LICENSEE".

Service(s) shall mean the specific service(s) provided by Sarasota County as described in the Statement of Work.

Software Maintenance and/or Technical Service Support shall mean services provided under this Agreement for the Software Products designated herein, which are made available pursuant to and detailed in the Software License Agreement and/or the Service Level Agreement.

Software Service Support and Maintenance shall mean the Program support services provided under Sarasota County's Software Service Support and Maintenance policies in effect on the date Software Service Support and Maintenance is ordered.

Specification Sheet shall mean the detailed description of each Service, ordered by "LICENSEE".

Supported Program License or Contract shall mean a Program license or contract for which "LICENSEE" has ordered Software Service Support and Maintenance services for the relevant time period under this Agreement.

System Availability shall be measured as follows: $(\text{Total Minutes of the Month} - \text{Minutes of Scheduled Service} - \text{Minutes of Downtime}) / (\text{Total Minutes of the Month} - \text{Minutes of Scheduled Service})$

Time and Materials shall mean Sarasota County will charge "LICENSEE" for such service on a time and materials basis at the agreed rate per person hour, plus full reimbursement of materials at Then current retail price, plus handling charges for materials plus reimbursement of travel, lodging, and per diem expenses.

Update(s) shall mean subsequent releases of the Programs, which are generally made available for Supported Program Licenses or Contracts at no additional charge, other than media and handling charges. Updates shall not include any releases, options or future products which Sarasota County licenses or provides to customers separately under consulting or customized software contracts.

Work shall mean any tangible deliverable provided by Sarasota County to "LICENSEE" as described in the Statement of Work.